[ORIGINAL CIVIL JURISDICTION]

TERRELL, J.A.

April 8, 1940.

IN THE MATTER OF THE ESTATE OF TAN CHIN BOON DECEASED.

TAN PENG YONG

v.

NG MEOW LANG (w) & 2 OTHERS.

[SINGAPORE ORIGINATING SUMMONS No. 142 of 1939]

Will—construction—forfeiture clause—validity of.

The will of a Chinese testator provides, **inter alia**, that "Should any of my said sons Tan Peng Kway, Tan Peng Yong and Tan Peng Siang, entitled to a share in my residuary estate, allow the same to be attached or garnished, or mortgage or otherwise encumber his share or become bankrupt (hereinafter referred to as 'the said Acts') then his share shall revert to my estate as though such son had died over one year before the commission of any of the said acts by him, and such share shall at the date of distribution be distributed as hereinbefore directed etc."

Held, that the forfeiture clause set out above is valid, although it must be strictly limited to the actual events mentioned therein.

Cases referred to:—

(1) *In re Forder,* (1892) 3 Ch. D. 481 at p. 488.

(2) *In re Porter,* (1927) 2 Ch. D. 291 at p. 310.

(3) *In re Smith,* (1916) 1 Ch. D. 369.

(4) *White v. Chitty,* L.R. 1 Eq. 372.

ORIGINATING SUMMONS.

Johannes for the Plaintiff.

R. C. H. Lim for the Defendants.

Eber for S. H. Cheah, Deputy Registrar of the Supreme Court, representing the interest of all persons who will benefit under the Will of the testator in the event of the forfeiture.

Cur. Adv. Vult.

Terrell, J.A.—The scheme of the will is that, subject to certain pecuniary legacies, the widow and the three sons and three daughters are to be paid certain monthly allowances until the period of distribution, which is fixed at 6 months after the death of the widow. There is a provision in clause 8 that the surplus income shall be accumulated and invested and form part of the residuary estate. The testator died on the 7th June, 1931, and the accumulation clause will be good for 21 years. It is impossible to foresee whether this period will or will not be exceeded. The point is not raised upon the Originating Summons and it is not necessary for me to decide what will happen to the fund if the period of 21 years is exceeded.

When the period of distribution arrives the residuary estate is to be divided among and paid to the testator's three sons. Clauses 10, 11, 12, 13 and 14 provide for substitutional gifts in case of the death of any of the sons before the date of distribution.

Clause 15 provides for a forfeiture of the share of income of any beneficiary should he or she "become bankrupt or mortgage or charge or otherwise encumber his or her allowance or do or suffer anything to be done whereby such allowance shall become liable to seizure, attachment or garnishment by any process of law". Prayer (1) of the amended Originating Summons raises the question whether this forfeiture clause is good, but no argument on the subject was addressed to me, and I see no reason for holding that the forfeiture clause is not perfectly valid.

Clause 16 of the will provides a forfeiture in respect of the shares of residue bequeathed to the sons and is in the following terms:—

> "16. Should any of my said sons Tan Peng Kway, Tan Peng Yong and Tan Peng Siang, entitled to a share in my residuary estate, allow the same to be attached or garnished, or mortgage or charge or otherwise encumber his share or become bankrupt (hereinafter referred to as 'the said acts') then his share shall revert to my estate as though such son had died over one year before the commission of any of the said acts by him, and such share shall at the date of distribution be distributed as hereinbefore directed by cluase 12 or 13 as they now stand or as varied by clause 14 (as the case may be) of this my Will."

It was argued that the shares of the sons were vested and that accordingly the condition against alienation was repugnant and void. But the shares are obviously not vested in possession and there is ample authority for the proposition that shares not yet in possession may be subjected to a condition subsequent against alienation etc. The gift of the shares is obviously contingent upon the beneficiaries surviving the period of distribution. For the purpose of the validity of the condition against alienation, it makes no difference whether the shares are contingent, or are vested subject to being divested (*In re Porter,*[2]).

It appears to me that the forfeiture clause is clearly good, though it must be strictly limited to the

happening of the actual events mentioned in clause 16. But on the happening of any of such events the forfeiture immediately operates (see *In re Forder,*[1] *per* Hanworth M.R. at p. 310), and the question whether or not the share was unencumbered at the date of distribution, which was the case in *White v. Chitty,*[4] and similar cases, does not arise. All these cases are distinguished in *In re Forder,*[1] and have no application where the testator has clearly stated that a forfeiture is to take place on the happening of one of several events.

Mr. Johannes for the applicants also argued that on the expiration of the 21 years of accumulation the sons would take the accumulated fund absolutely and that the forfeiture clause would not apply to shares which had accrued as a result of a forfeiture, and that such accrued shares would also be held absolutely. From this he argued that the forfeiture clause would be repugnant to such absolute interests and would accordingly be repugnant altogether (*In re Smith,*[3]).

In my opinion this argument is misconceived. As pointed out above, the destination of the fund mentioned in clause 8 after the period of 21 years has not been determined and may never be determined. If the period of 21 years were exceeded and if then the fund vested absolutely in some person or persons, that would be as the result not of an absolute gift by the testator, but of the intervention of the statute, and *In re Smith,*[3] has no application. The question whether the forfeiture clause applies to accrued gifts also has not arisen, and may never arise. It cannot affect the construction of the forfeiture clause as applied to the gift of residue.

I find, therefore, that the conditions for forfeiture in clause 15 and 16 are valid.

The costs of all parties will be taxed as between solicitor and client and paid out of the estate.

Order accordingly.

END OF STRAITS SETTLEMENTS OFFICIAL REPORTS.